IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

LETTER PATENT APPEAL NO.47 OF 2006

Dockyard Labour Union ...Appellants

Vs.

Mazgaon Dock Ltd. ...Respondent

Ms.Tavadia i/b. Mr.M.M.Thorat for Appellant

Mr.P.M.Palshikar for Respondent

CORAM: R.M.S.KHANDEPARKAR &
SMT.ROSHAN DALVI, JJ.
DATED: 3RD APRIL, 2006

P.C.

1. Heard.

2. Undisputedly the appellants have not produced any material or evidence in support of their claim that they were served with the order on 4th September 1984 and on that count they could not report to their duty. At the same time undisputedly other employees had reported on 1st September 1984 on service of the copy of the order.

3. Drawing our attention to the evidence which discloses the statement by Ramesh Ganpat Ahire, Officer of the Company to the effect that "there is no documentary evidence to show that these workmen were given letters dated 31st August 1984 on that day". It was sought to be argued that once it is established by

the workmen that the order of 31st August 1984 was not served upon the employees on 31st August 1984, it was necessary for the Management to establish that the order was in fact served upon the employees on 1st September 1984 for reporting on work and that has not been established by the management and therefore, the impugned order needs interference in the appeal. We are not at all impressed by this argument. Once the workmen had approached to the Court with the grievance that they could not report to the duty prior to 4th September 1984 as they were served with the copy of the order only on 4th September 1984, it was primarily for the workmen to establish the said fact and unless the burden in that regard is discharged by the workmen, the onus does not shift upon the employer to prove to the contrary. Stating that the letter dated 31st August 1984 was not served on 31st August 1984 itself does not amount to an admission on the part of the management that the copy of the order was not served on 1st September 1984. It is to be remembered that it is not in dispute that other employees did reporte on 1st September 1984. Obviously they could not have reported on the duty on 1st September 1984 unless they were served with the copy of the order on or before 1st September 1984.

4. In these circumstances it was necessary for the workmen to establish their contention that they were in fact served on 4th September 1984 and

therefore, they could not report to the duty prior to 4th September 1984. Considering these facts we do not find any illegality or infirmity in the impugned order and it does not require any interference. Hence, the appeal is rejected.

(SMT. ROSHAN DALVI, J.) (R.M.S.KHANDEPARKAR,J.)